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SUPREME COURT OF THE UNITED STATES

October Term, 1946.

No. 142

STATE OF LOUISIANA, EX REL.
WILLIE FRANCIS,
Petitioner

Versus

E. L. RESWEBER, SHERIFF OF THE PARISH OF ST. MARTIN, LOUISIANA, ET AL.

Writ of certiorari to the Supreme Court of Louisiana.

Brief on Behalf of E. L. Resweber, Sheriff of the Parish of St. Martin, Louisiana; Hon. James D. Simon, Judge of the 16th Judicial District Court, Parish of St. Martin, Louisiana; His Excellency, James H. Davis,, Governor of the State of Louisiana; Hon. J. Emile Verret, Lieutenant Governor of the State of Louisiana; Hon. Fred S. LeBlanc, Attorney General of the State of Louisiana; Hon. L. O. Pecot, District Attorney for the 16th Judicial District Court.

IN OPPOSITION TO THE WRIT GRANTED.

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L. O. PECOT,
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INDEX

	Pages
LEGAL HISTORY	2-6
FACTS	7-8
ARGUMENT	9-32
SUMMATION	33-35
APPENDIX	36-101
U. S. Constitution—5th Amendment	36
U. S. Constitution—8th Amendment	37
U. S. Constitution—14th Amendment	38
La. Constitution—Article I, Sec. 2	39
La. Constitution—Article I, Sec. 9	40
La. Constitution—Article I, Sec. 12	41
La. Constitution—Article VII, Sec. 2	42
La. Constitution—Article VII, Sec. 10	43, 44, 45
La. Criminal Code—Article 30	46
La. Code of Criminal Procedure—Art. 567	47
La. Code of Criminal Procedure—Art. 568	48
La. Code of Criminal Procedure—Art. 569	49
La. Code of Criminal Procedure—Art. 570	50
La. Code of Criminal Procedure—Art. 571	51
U. S. Supreme Court Rule 38, Para. 2	52
La. Board of Pardons hearing	53-101
STATUTES CITED:	
La. Criminal Code	3
La. Code of Criminal Procedure—Art. 569	3, 17, 33
La. Code of Criminal Procedure—Art. 570	17, 33
U. S. Code—Title 28, Sec. 344(b)	24

CONSTITUTIONS CITED:

	Pages
Louisiana (1921)—Article I, Sec. 2	34
Louisiana (1921)—Article I, Sec. 9	34
Louisiana (1921)—Article I, Sec. 12	33
Louisiana (1921)—Article VII, Sec. 2	10
Louisiana (1921)—Article VII, Sec. 10	26
U. S. Constitution—Amendment 5	11, 34
U. S. Constitution—Amendment 8	15, 33
U. S. Constitution—Amendment 14	18, 34

CASES CITED:

Commonwealth v. Azer (Mass. 1941), 31 N.E. (2d) 549 ..... 12, 13

Commonwealth ex rel Garland v. Ashe, Warden, (Pa. 1942), 26A (2d) 190 13

Donato v. United States, No. 4492, CCA 3rd Circuit, 48 Fed. (2d) 142 12

Ex parte Wilson, (Cr. 2764), (Cal. 1925) 238 Pa. 358 15

Ex p. Watkins (1833) 7 Pet. 573, 8 U.S. (L. ed.) 786 15

In re Taylor (D.C. Minn. 1879) 12 Chicago Leg. N. 17, 23 Fed. Cas. No. 13774 10

Levin et al v. U.S. 5 Fed. (2d) 598, 46 S. Ct. 21, 269 U.S. 562, 70 L. ed. 412 12

People ex rel. Massarsky v. Adams Warden (1944) 47 N.Y.S. (2d) 375 12

People v. Tibbits, (Cr. 3713), (Calif. 1943), 140 P. (2d) 726 14

Pages

State v. Carte, (Kan. 1943), 143 P. (2d) 774..... 14

United States v. Lauzeat et al., 260 U.S. 377, 382, 43 S. Ct. 141, 142, 67 (L. ed.) 314..... 11

See also:

Allen v. Georgia (1897) 166 U.S. 138, 17 S. Ct. 525, 41 U.S. (L. ed.) 949..... 18

Barron vs. Baltimore, (1833) 7 Pet. 243, 247, 8 U.S. (L. ed.) 672..... 16

Bolln vs. Nebraska, (1900) 176 U.S. 87, 20 S. Ct. 287, 44 U.S. (L. ed.) 382, affirming (1897) 51 Neb. 581, 71 N.W. 444..... 16

Brown vs. New Jersey, (1899) 175 U.S. 174, 90 S. Ct. 77, 44 U.S. (L. ed.) 119..... 16

Brown vs. Walker, (1896) 161 U.S. 606, 16 S. Ct. 644, 40 U.S. (L. ed.) 819, affirming (1895) 70 Fed. 46..... 16

Caldwell v. Texas, (1891) 11 S. Ct. 224, 137 U.S. 697, 34 L. ed. 816..... 23

Collins vs. Johnston, (1915) 237 U.S. 502, 33 S. Ct. 649, 39 U. S. (L. ed.) 1071..... 15

Collins v. Johnston, (1915) 237 U.S. 502, 35 S. Ct. 649, 59 U.S. (L. ed.) 1071..... 20

Duncan v. Missouri, (1894) 14 S. Ct. 570, 152 U.S. 382, 38 L. ed. 485..... 23

Edwards vs. Elliott, (1874) 21 Wall. 552, 537, 22 U.S. (L. ed.) 487..... 16

Eilenbecker vs. Plymouth, County, (1890) 134 U.S. 34, 10 S. Ct. 424, 33 U.S. (L. ed.) 801..... 16

Pages

Frank v. Mangum, (1915) 237 U.S. 309, 35 S. Ct. 582, 59 U.S. (L. ed.) 969 19

Giozza v. Tiernan (1893) 13 S. Ct. 721, 148 U.S. 662, 37 L. ed. 599 23

Hart v. Commonwealth, 109 S. E. 582, 587, 131 Virginia, 726 17

Howard v. Kentucky, (1906) 200 U.S. 164, 26 S. Ct. 189, 50 U. S. (L. ed.) 421 24

In re Converse (1891) 137 U.S. 624, 11 S. Ct. 191, 34 U.S. (L. ed.) 796 24

In re: Kemmler (N.Y. 1890) 10 S. Ct. 930, 136 U.S. 449, 34 L. ed. 519 17

Leeper v. Texas (1891) 11 S. Ct. 577, 139 U.S. 467, 35 L. ed. 225 23

Livingston vs. Moore, (1833) 7 Pet. 351, 8 U.S. (L. ed.) 751 17

McElvaine vs. Brush, (1891) 142 U.S. 158, 12 S. Ct. 166, 35 U.S. (L. ed.) 971 16

Monongahela Nav. Co. vs. U. S., (1803) 148 U.S. 324, 13 S. Ct. 622, 37 U.S. (L. ed.) 463 16

O'Neil vs. Vermont, (1892) 144 U.S. 332, 12 S. Ct. 693, 36 U.S. (L. ed.) 450 16

O'Neill v. Vermont (1892) 12 S. Ct. 693, 144 U.S. 323, 36 L. ed. 450 23

Ohio vs. Dollison, (1904) 194 U.S. 447, 24 S. Ct. 703, 48 U.S. (L. ed.) 1002 16

People v. Durston, 24 N. E. 6, 7, 119 N.Y. 569 17

Powell vs. Alabama, 287 U.S. 45 31

Pages

Pox vs. Ohio, (1847) 5 How. 410, 434, 12 U.S. (L. ed.) 213 16

Spies vs. Illinois, (1887) 123 U.S. 131, 166, 8 S. Ct. 21, 22, 31 U.S. (L. ed.) 80 16

State ex rel. Pierre v. Jones, 200 La. 809, 9 So. (2d) 42, (Writs denied) 63 S. Ct. 64, 87 L. ed. 17

State v. Tomassi, 69 A. 214, 217, 75 N.J.L. 739 17

Ughbanks vs. Armstrong, (1908) 208 U.S. 481, 29 S. Ct. 372, 52 U.S. (L. ed.) 382 16

U. S. vs. Rhodes, (1883) 1 Abb. (U.S.) 28, 27 Ped Cas. No. 16,151 17

U. S. vs. Hall, (1871) 3 Chicago Leg. N. 260, 26 Fed. Cas. No. 16,202 17

Walker v. Sauvinet, (1875) 92 U.S. 92, 23 U.S. (L. ed.) 678 24

West v. Lou iana (1904) 194 U.S. 263, 24 S. Ct. 650, 48 U.S. (L. ed.) 695 21

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Writ of certiorari to the Supreme Court of Louisiana. Brief on Behalf of E. L. Resweber, Sheriff of the Parish of St. Martin, Louisiana; Hon. James D. Simon, Judge of the 16th Judicial District Court, Parish of St. Martin, Louisiana; His Excellency, James H. Davis,, Governor of the State of Louisiana; Hon. J. Emile Verret, Lieutenant Governor of the State of Louisiana; Hon. Fred S. LeBlanc, Attorney General of the State of Louisiana; Hon. L. O. Pecot, District Attorney for the 16th Judicial District Court.

IN OPPOSITION TO THE WRIT GRANTED.

MAY IT PLEASE THE COURT:

Your respondents, His Excellency, James H. Davis, Governor of the State of Louisiana, and Honorable J. Emile Verret, Lieutenant Governor of the State of Louisiana, herein appearing through their counsel, M. E. Culligan, Special Assistant Attorney General,

Respondent Hon. Fred S. LeBlanc, Attorney General of the State of Louisiana, in proper persona, and your Respondents E. L. Resweber, Sheriff of the Parish of St. Martin, Louisiana, and Honorable James D. Simon, Judge, 16th Judicial District Court, Parish of St. Martin, Louisiana, herein appearing through their counsel, L. O. Pecot, District Attorney, 16th Judicial District of Louisiana and L. O. Pecot, District Attorney, in proper persona, inform Your Honors:—

LEGAL HISTORY:

Willie Francis, a citizen of Louisiana, was indicted by the Grand Jury of the Parish of St. Martin, State of Louisiana, on September 5, 1945 (Record P. 1) for the murder of Andrew Thomas, also a citizen of the State of Louisiana.

On September 6, 1945, Francis being unable to employ counsel, the Court appointed Honorable James R. Parkerson, Attorney of the Franklin (St. Mary Parish), Louisiana bar and the Honorable Otto J. Mestayer of the New Iberia, Louisiana bar as associate counsel. (Record P. 2).

Both of these attorneys are lawyers of many years experience, thoroughly seasoned practioners of the highest ability and integrity. Francis was then arraigned in the presence of his counsel, James R. Parkerson, a plea of "not guilty" entered, and the case fixed for trial on September 12, 1945.

Trial was commenced on September 12, 1945, Francis being reperesented by Messrs. Parkerson and Mestayer, the State being represented by L. O. Pecot, District Attorney. A jury was duly impanelled and the Jury after hearing all the evidence, arguments by counsel and the law as charged them by Honorable James D. Simon, Judge, did on September 13, 1945 return a verdict of "Guilty as Charged". (Record P. 5).

Francis was then remanded to the Parish Jail to await the sentence of the Court.

On September 14, 1945 the following sentence was imposed: (Record P. 6)

> "Under Article 30 of the Criminal Code of Louisiana, I now sentence you Willie Francis to suffer death in the manner provided by law."

On March 29, 1946, (Record P. 6-7) death warrant was issued by His Excellency, James H. Davis, Governor of the State of Louisiana, in accordance with the law (Article 569, Code of Criminal Procedure), (Appendix P. 49) commanding the Sheriff of the Parish of St. Martin "to cause the execution to be done on the body of said Willie Francis, so convicted and condemned, in all things according to the judgment and sentence of said Court and the law in all such cases made and provided, by electrocution; that is, causing to pass through the body of the said Willie Francis a current of electricity of sufficient intensity to cause death, and the application and continuance of such cur-

rent through the body of said Willie Francis until said Willie Francis is dead * * *"

On the day set in the Governor's death warrant, May 3, 1946, between the hours of 12:00 o'clock noon and 3:00 o'clock p. m., the necessary steps preparatory to the electrocution of Francis were taken.

Through a latent electrical defect, the attempt to electrocute Francis failed, the State contending no current whatsoever reached Francis' body, the relator contending a current of electricity did pass through his body; but in any event, Willie Francis was not put to death. On the same day, Governor Davis granted a reprieve until May 9, 1946, and stayed the execution of his death warrant. (Record Page 8).

(We call Your Honors attention to what is undoubtedly a typographical error in Paragraph 2 of petitioner's application wherein the date of the death warrant is shown May 26th instead of March 29, 1946, as correctly shown in Record Page 6, folio 11.)

On May 7th, Willie Francis, through Attorney Honorable Bertrand deBlanc, filed a petition for a writ of habeas corpus (Record Pages 9-10-11-12) which was denied on the same date.

On May 8th, Willie Francis, through two other attorneys, A. P. Tureaud and Joseph R. Thornton, also filed a petition for a writ of habeas corpus which was denied. (We call Your Honors attention to the fact

that this petition, dated May 8, 1946, is not shown in this Record but which petition is a part of the record before the Louisiana Supreme Court and was considered by that Court under Docket No. 38219 (Record P. 27).

On May 8, 1946, Lieutenant Governor J. Emile Verret, Acting Governor of Louisiana, on that date granted a reprieve and stayed the execution until after June 7, 1946 (folio 27), and recalled and cancelled the death warrant issued by Governor Davis.

On May 9, 1946 (Record P. 9), relator, through Attorney deBlanc, filed a petition for writs of certiorari, mandamus and prohibition, and for a writ of habeas corpus to the Louisana Supreme Court, their Docket No. 38221, and on May 14th (Record P. 17), also filed a supplemental petition. An answer to plaintiff's original petition was filed on May 13, 1946, (Record P. 19-20) by all of your respondents except Honorable James D. Simon, Judge, 16th Judicial District Court, who filed a separate answer thereto (Record P. 25).

A separate petition for writs of certiorari, mandamus and prohibition was filed by relator Francis through Attorneys Tureaud and Thornton, addressed to the Louisiana Supreme Court, filed on the 8th day of May, 1946, under the Docket No. 38219. (We call Your Honors attention to the fact that this petition also is not shown in this Record.)

On May 15, 1946, these two proceedings under the Docket numbers 38219 (Attorneys Tureaud and Thornton's petition) and 38221 (Attorney deBlanc's original and supplemental petition) having been considered, the writs of certiorari, mandamus and prohibition and the writ of habeas corpus applied for were dismissed (Record P. 27) unanimously by the Louisiana Supreme Court.

For Your Honors information, our Louisiana Supreme Court is composed of seven members, and we are giving you below the names and titles of the Justices whose initials are appended to their unanimous opinion.

C. A. O'N.—C. A. O'Niell, Chief Justice.

W. G. R.—Wynne G. Rogers, Senior Justice (now deceased).

J. B. F.—J. B. Fournet, Associate Justice.

A. L. P.—A. L. Ponder, Associate Justice.

J. B. A. (should be J. B. H., typographical error)—J. B. Hamiter, Associate Justice.

F. W. H.—F. W. Hawthorne, Associate Justice.

R. F. K.—R. F. Kennon, Acting Associate Justice.

No rehearing was applied for, and relator on June 10th petitioned Your Honors for the writ of certiorari, which writ Your Honors granted on June 10, 1946, Mr. Justice Jackson taking no part in the consideration or decision of relator's application.

FACTS:

Believing Your Honors should be informed of the details of this heinous crime, we are giving you below a brief resume of this murder.

The defendant, Willie Francis, a citizen of Louisiana, was indicted and convicted for the murder of a Louisiana citizen, Andrew Thomas.

The locale of this crime was the town of St. Martinville, located in the heart of a most picturesque section of Louisiana, known as "The Teche Country", immortalized by Longfellow in his poem, "Evangeline".

The motive for this crime was robbery (in underworld parlance, "a stick-up"), and to perpetrate this robbery, this murder was committed.

Deceased, Andrew Thomas, was the owner and operator of a drug store, located in St. Martinville (St. Martin Parish), Louisiana, in which town he also resided.

Relator, Willie Thomas, also resided in St. Martinville.

On November 8, 1944, Willie Francis laid in wait for three hours behind the garage of Andrew Thomas for him to come to his (Thomas) home from his drug store.

Francis was armed with a pistol and holster he had stolen previously (during September) out of an automobile, all being the property of August Fuselier.

After Andrew Thomas arrived and was closing the door of his garage, Francis shot him five times. One bullet passed through Andrew Thomas' right eye coming out the temple, two more bullets entered his body under the armpit, one bullet entered about the center of the back, and one bullet a little lower down in the back. Francis then took Thomas' wallet containing $4.00 and Thomas' watch.

In August 1945, approximately nine months afterwards, Francis was arrested in Port Arthur, Texas, charged with assaulting and robbing a man there and confessed to the Texas officials his murder of Thomas. When arrested in Texas, he had on his person the very wallet he had taken from Thomas. Francis was immediately returned to Louisiana. He made a voluntary, and complete confession to Louisiana authorities. Francis had sold the watch he had taken from Thomas to a jewelry store in New Iberia, Louisiana, its name being furnished to the St. Martin authorities by Francis, and the case of which watch was recovered at the jewelry store. Francis also showed the St. Martin authorities where he had thrown the pistol after the murder, and it was recovered, and Francis also showed where he had thrown the holster away, in a culvert back of the railroad tracks back of the Thomas' place, in which spot it was recovered.

Francis has never denied his guilt.

ARGUMENT

Petitioner Francis, has never contended in any Louisiana Court that he did not receive a fair and impartial trial by the State of Louisiana.

Petitioner has been represented in Louisiana's courts by able, aggressive, conscientious counsel; namely, Attorneys Parkerson, Mestayer, deBlanc, Tureaud and Thornton.

Petitioner's whole complaint is that as the sentence of death was not executed on May 3rd, the Governor of Louisiana cannot again issue a death warrant ordering the sentence of death executed by the lawful method fixed by the Louisiana law.

It is admitted that the sentence of death remains unexecuted and Francis is in the custody of your respondent, Sheriff E. L. Resweber.

It is apparent from all the writs that relator has filed, Sheriff Resweber is holding Francis under commitment for the crime of murder and under the sentence of death imposed by the Court.

There is no statutory law of Louisiana nor does its Constitution require that its Courts of original or appellate jurisdiction grant a hearing upon an application for a writ of habeas corpus. All facts necessary to grant or deny relator's petition for the writs of habeas corpus were contained in the petitions. It was within the sound discretion of the Louisiana Courts

to deny these petitions. The Sixteenth Judicial District Court, Parish of St. Martin (the trial court), was the court of competent jurisdiction of the offense and of the person of the relator and had the power and legal duty to render the sentence. The petitions for the writs of habeas corpus are mere endeavors to set aside the sentence of death and such collateral attack was properly denied.

Article No. 7, Section No. 2, Constitution of Louisiana (App. P. 42) requires that the appellate court give reasons for declining to exercise supervisory jurisdiction or to grant a writ of habeas corpus. Those reasons are very full and complete. (Record Pages 27 to 31.)

A refusal to grant a writ of habeas corpus upon application is not a deprivation of liberty without due process of law. Laws of a state under which the officers empowered to act upon a petition can judicially determine whether upon the case made out by the petitioner it should be granted, and may refuse if in his judgment, upon the facts prescribed upon a hearing, the result would be that the prisoner would be remanded, are not in violation of this amendment. In re Taylor, (D.C.Minn. 1879) 12 Chicago Leg. N. 17, 23 Fed. Cas. No. 13,774.

Relator's counsel make a most unique attempt to confer jurisdiction upon Your Honors, in Article VIII of their application to this Honorable Court for the writ of certiorari; we quote therefrom:

"* * * has been denied the protection of the due process clause of the Fourteenth Amendment of the Constitution of the United States by the action of the Supreme Court of the State of Louisiana, the Governor of the State of Louisiana, and the Sheriff of the Parish of St. Martin, Louisiana, in that petitioner is being placed in jeopardy of life and liberty a second time for the same offense and that to subject the petitioner a second time to final preparation for his execution itself would be cruel and inhuman punishment in view of the prior unsuccessful effort to execute him in accordance with law on May 3, 1946."

Answering this contention, we respectfully reproduce below the "jeopardy" clause of the Fifth Amendment: (App. P. 36).

"* * * Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

This clause is clearly a limitation upon the powers of the Federal Government and is not a limitation upon the States.

In the case of United States v. Lanza et al., 260 U.S. 377, 382, 43 S. Ct. 141, 142, 67 (L. ed.) 314, Mr. Chief Justice Taft said:

"* * * The Fifth Amendment, like all the other guarantees in the first eight amendments, appiies only to proceedings by the federal government (Barron v. City of Baltimore, 7 Pet. 243, 8 L. Ed. 672), and the double jeopardy therein forbidden is a second prose-

cution under authority of the federal government after a first trial for the same offense under the same authority. * * *"

The constitutional inhibition is not against double punishment for one offense, but against double jeopardy for the same offense.

Levin et al. vs. U. S., 5 Fed. (2d) 598, writs refused 46 S. Ct. 21, 269 U. S. 562, 70 L. ed. 412.

It was also held in Donato vs. United States, No. 4492, C.C.A. 3rd Circuit, 48 Fed. (2d) 142:

"* * * The constitutional prohibition is not against double punishment, but against being "twice put in jeopardy", double trial. Bens vs. United States, 266 F. 152, 159 (C.C.A. 2); United States vs. One Buick Coach Automobile (D.C.) 34 F. (2d) 318, 321; United States vs. Ball, 163 U. S. 662, 669, 16 S. Ct. 1192, 41 L. ed. 300. * * *"

In the case of People ex rel. Massarsky v. Adams, Warden, (1944) 47 N.Y. S. (2d) 375, it was held:

"* * * Both our National and State Constitutions declare that no person shall be subject to be twice put in jeopardy for the same offense, Amend. 5, U. S. Const.; Art. I, sec. 6, N. Y. State Const.; this is equivalent to saying that no person shall be twice prosecuted for the same crime. * * *"

In the case of Commonwealth v. Azer, (Mass. 1941), 31 N. E. (2nd) 549, it was held:

"* * * Whether there was double jeopardy depends upon our common law and statutes. Our Constitution contains nothing about it, and the Fifth Amendment to the Constitution of the United States has no application to proceedings in State courts. Spies v. Illinois, 123 U. S. 131, 166, 8 S. Ct. 22, 31 L. Ed. 80; Phillips v. McCauley, 9 Cir., 92 F. 2d 790; Commonwealth v. DiStasio, 297 Mass. 347, 353, 8 N. E. 2d 923, 113 A. L. R. 1133. Compare Grosjean v. American Press Co., 297 U. S. 233, 242 et seq., 56 S. Ct. 444, 80 L. Ed. 660. * * *"

In the case of Commonwealth ex rel. Garland v. Ashe, Warden, (Pa. 1942), 26 A. (2d) 190, it was held:

"* * * The relator's petition must be dismissed. The Fifth Amendment to the Federal Constitution which declares that no person shall for the same offense be twice put in jeopardy of life or limb is a restriction only on the power of the Federal Government. Hurtado v. California, 110 U. S. 516, 534, 4 S. Ct. 111, 28 L. Ed. 232. The tenth section of the Pennsylvania Declaration of Rights, P. S. Const., also contains a prohibition against a person being 'twice put in jeopardy of life or limb' and is a restriction on the power of the state government. But the same act 'denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each. * * * the double jeopardy therein forbidden (i.e. in the Fifth Amendment) is a second pros-

ecution under authority of the federal government after a first trial for the same offense under the same authority.' United States v. Lanza, 260 U. S. 377, 382, 43 S. Ct. 141, 142, 67 L. Ed. 314. * * *"

In the case of State v. Carte, (Kan. 1943), 143 P. (2d) 774, it was held:

"* * * It is always well to bear in mind the clear distinction between the subjects of sentence and former jeopardy. Judgment of sentence can be pronounced only after a person has been put on trial and after he has been convicted of, or has pleaded guilty to, the offense, or offenses, charged. Section 10 of our Bill of Rights, in so far as pertinent here, provides: 'No person shall be * * * twice *put in jeopardy* for the same offense.' (Emphasis supplied).

It will be observed the protection afforded by this provision is not against the peril of second sentence or punishment but against being put on trial again for the same offense. People v. Allen, 368 Ill. 368, 383, 14 N. E. 2d 397. * * *"

In the case of People v. Tibbits, (Cr. 3713), (Calif. 1943), 140 P. (2d) 726, it was held:

"* * * Appellant's contention that the procedure herein constitutes double jeopardy within the meaning of section 13, Article I of the Constitution of California, providing 'No person shall be twice put in jeopardy for the same offense', cannot be sustained, because the constitutional guaranty relating to once in jeo-

pardy 'has no application to the service of a sentence, but applies only to twice being put upon trial for the same offense.' In re Wilson, 196 Cal. 515, 524, 238 P. 359, 362. * * *"

In the case of Ex parte Wilson, (Cr. 2764), (Cal. 1925) 238 Pa. 358, it was held:

"* * * First, the constitutional guarantee has no application to the service of a sentence, but applies only to twice being put upon trial for the same offense. In re Harron, 191 Cal. 457, 466, 217 P. 728; 7 Cal. Jur. 943. And, second, the effect of this decision is that the incarceration in the state prison was proper. It is true that a misconception of the law has resulted in the execution of the judgment being interrupted, but that is a circumstance which the state board of prison directors may consider. * * *"

Further answering relator's contention, we reproduce Amendment Eight of the United States Constitution: (App. P. 37).

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

This amendment does not apply to the States.

Ex p. Watkins (1833) 7 Pet. 573, 8 U.S. (L. ed.) 786.

See also:

Collins vs. Johnston, (1915) 237 U.S. 502, 35 S. Ct. 649, 59 U.S. (L. ed.) 1071

Ughbanks vs. Armstrong, (1908) 208 U.S. 481, 29 S. Ct. 372, 52 U.S. (L. ed.) 582

Ohio vs. Dollison, (1904) 194 U.S. 447, 24 S. Ct. 703, 48 U.S. (L. ed.) 1062

Bolln vs. Nebraska, (1900) 176 U.S. 87, 20 S. Ct. 287, 44 U.S. (L. ed.) 382, affirming (1897) 51 Neb. 581, 71 N.W. 444

Brown vs. New Jersey, (1899) 175 U.S. 174, 20 S. Ct. 77, 44 U.S. (L. ed.) 119

Brown vs. Walker, (1896) 161 U.S. 606, 16 S. Ct. 644, 40 U.S. (L. ed.) 819, affirming (1895) 70 Fed. 46

Monongahela Nav. Co. vs. U.S., (1893) 148 U.S. 324, 13 S. Ct. 622, 37 U.S. (L. ed.) 463

O'Neil vs. Vermont, (1892) 144 U.S. 332, 12 S. Ct. 693, 36 U.S. (L. ed.) 450

McElvaine vs. Brush, (1891) 142 U.S. 158, 12 S. Ct. 156, 35 U.S. (L. ed.) 971

Eilenbecker vs. Plymouth County, (1890) 134 U.S. 34, 10 S. Ct. 424, 33 U.S. (L. ed.) 801

Spies vs. Illinois, (1887) 123 U.S. 131, 166, 8 S. Ct. 21, 22, 31 U.S. (L. ed.) 80

Edwards vs. Elliott, (1874) 21 Wall. 552, 557, 22 U.S. (L. ed.) 487

Fox vs. Ohio, (1847) 5 How. 410, 434, 12 U.S. (L. ed.) 213

Barron vs. Baltimore, (1833) 7 Pet. 243, 247, 8 U.S. (L. ed.) 672

Livingston vs. Moore, (1833) 7 Pet. 551, 8 U.S. (L. ed.) 751

U. S. vs. Rhodes, (1866) 1 Abb. (U.S.) 28, 27 Fed. Cas. No. 16,151

U. S. vs. Hall, (1871) 3 Chicago Leg. N. 260, 26 Fed. Cas. No. 15,282

It is incontrovertible that the State of Louisiana Statute, Articles 569-570 (App. R. 49-50) of the Code of Criminal Procedure, providing for the infliction of the death penalty by the application of electricity is not such a cruel and unusual punishment as to abridge the privileges and immunities of citizens.

In re: Kemmler (N.Y. 1890) 10 S. Ct. 930, 136 U.S. 449, 34 L. ed. 519.

That death by electrocution is not a cruel or inhuman mode of punishment has been held in:

Hart vs. Commonwealth, 109 S. E. 582, 587, 131 Virginia 726;

People vs. Durston, 24 N.E. 6, 7, 119 New York 569;

State vs. Tomassi, 69 A. 214, 217, 75 N. J. L. 739, and our Louisiana Supreme Court has held that death by electrocution is more humane and less painful than death by hanging.

State ex rel. Pierre vs. Jones, 200 La. 809, 9 So. (2d) 42.

Your Honors put your seal of approval upon this decision by our Louisiana Supreme Court as you denied writs taken—63 S. Ct. 64, 87 L. ed. Page.....

We repeat, *this amendment does not apply to the States*, and is only a limitation on the United States.

As to the effect of the Fourteenth Amendment "due process" clause, United States Constitution, App. P. 38 we respectfully urge that before Your Honors are justified in stating that there has been a failure of due legal process, this relator must show you he has been deprived of some fundamental right, especially where the Louisiana Supreme Court has acted in accordance with the Constitution and Statutes of the State of Louisiana. No statute of the State of Louisiana has been attacked by relator. No Constitutional provision of the State of Louisiana has been attacked by relator.

In the case of Allen vs. Georgia (1897) 166 U.S. 138, 17 S. Ct. 525, 41 U. S. (L. ed.) 949, it was held:

"* * * To justify any interference upon our part, it is necessary to show that the course pursued has deprived, or will deprive, the plaintiff in error of his life, liberty, or property without due process of law. Without attempting to define exactly in what due process of law consists, it is sufficient to say that, if the supreme court of a state has acted in consonance with the constitutional laws of a state and its own procedure, it could only be in very exceptional circumstances that this court would feel justified in saying

that there had been a failure of due legal process. We might ourselves have pursued a different course in this case, but that is not the test. The plaintiff in error must have been deprived of one of those fundamental rights, the observance of which is indispensable to the liberty of the citizen, to justify our interference.* * *"

And in this case it was also held:

"* * * Indeed, it is admitted that it would be useless to ask the supreme court of the state of Georgia to reinstate this case, or to grant to the plaintiff in error any relief whatever, because under the rules and decisions of that court, and under the statutes of the state of Georgia, as construed by that court, such relief would be denied. Whether the court should give the plaintiff 60 days, or until the last day of the term, to appear and surrender himself to custody, was a matter for the court to determine; and, even if there were error in that particular, it would not constitute a denial of due process of law. * * *"

In Frank vs. Mangum, (1915) 237 U.S. 309, 35 S. Ct. 582, 59 U.S. (L. ed.) 969, it was held:

"* * * As to the "due process of law" that is required by the 14th Amendment, it is perfectly well settled that a criminal prosecution in the courts of a state, based upon a law not in itself repugnant to the Federal Constitution, and conducted according to the settled course of judicial proceedings as established by the law of the state, so long as it includes notice and a

hearing, or an opportunity to be heard, before a court of competent jurisdiction, according to established modes of procedure, is "due process" in the constitutional sense. * * *"

The death sentence imposed in this case does not violate the provisions of the Fourteenth Amendment, either as to due process of law or as to the equal protection of the law, as the State has the right to establish appropriate penalties for the commission of crime.

In Collins vs. Johnston, (1915) 237 U.S. 502, 35 S. Ct. 649, 59 U.S. (L. ed.) 1071, Your Honors said:

"* * * To establish appropriate penalties for the commission of crime, and to confer upon judicial tribunals a discretion respecting the punishment to be inflicted in particular cases, within limits fixed by the law-making power, are functions peculiarly belonging to the several states; and there is nothing to support the contention that the sentence imposed in this case violates the provisions of the 14th Amendment either in depriving appellant of his liberty without due process of law, or in denying to him the equal protection of the laws. Re Kemmler, 136 U.S. 436, 448, 34 L. ed. 519, 524, 10 Sup. Ct. Rep. 930; Coffey vs. Harlan County, 204 U.S. 659, 662, 51 L. ed. 666, 668, 27 Sup. Ct. Rep. 305. * * *"

Your Honors have also held:

"* * * The 8th Amendment is also invoked, with its prohibition of cruel and unusual punishments; but, as

has been often pointed out, this is a limitation upon the Federal government, not upon the states. Barron vs. Baltimore, 7 Pet. 243, 247, 8 L. ed. 672, 674; Pervear vs. Massachusetts, 5 Wall. 475, 480, 18 L. ed. 608, 609; McElvaine vs. Brush, 142 U.S. 155, 158, 35 L. ed. 971, 973, 12 Sup. Ct. Rep. 156; O'neil vs. Vermont, 144 U.S. 323, 332, 36 L. ed. 450, 456, 12 Sup. Ct. Rep. 693; Ensign vs. Pennsylvania, 227 U.S. 592, 597 L. ed. 658, 661, 33 Sup. Ct. Rep. 321. * * *"

Again in West vs. Louisiana (1904) 194 U.S. 263, 24 S. Ct. 650, 48 U.S. (L. ed.) 965, it was held:

"* * * We are bound by the construction which the state court gives to its own Constitution and statutes and to the law which may obtain in the state, under circumstances such as those existing herein. Among many of the cases to that effect, see *Brown vs. New Jersey*, 175 U.S. 172, 44 L. ed. 119, 20 Sup. Ct. Rep. 77. * * *"

Your Honors have held that a State cannot be deemed guilty of a violation of its obligations under the Constitution because of a decision, even if erroneous, of its highest court, while acting within its jurisdiction. It must be accepted as a correct exposition of the law of the State, Common, Statutory, and Constitutional, and the only inquiry can be, does the State law, as applied, afford due process?

Petitioner's counsel in the petition, addressed to Your Honors, for the issuance of the writ of certio-

rari) in Article No. 9 thereof, admit that they realize that the jeopardy clause of the Fifth Amendment of the United States Constitution has a mere procedural aspect. Your Honors, since 1833 to date, have uniformly held that the interpretation of the jeopardy clause dates back to the English Common law and was included in the Magna Charta in 1215, but despite this jurisprudence and the known significance of the term "jeopardy" for a period of practically eight hundred years, counsel are endeavoring to have you write into the Constitution that it was the intention of the framers of that document, (which was directly based upon the Magna Charta, when same was inserted in the Fifth Amendment,) that it had a literal meaning rather than a legal signification. We hardly believe Your Honors could give any serious consideration to this suggestion of relator's counsel even if the Fifth Amendment "jeopardy clause" did apply to the States, which Your Honors know it does not.

In Article No. 9 of the petition an incomplete statement of law is made, that while the Fifth Amendment of the United States Constitution does not directly apply to the States themselves, it does apply through the extension and interpretation of the due process clause of the Fourteenth Amendment, but counsel fails to state that there is no case wherein Your Honors have held that the jeopardy clause of the Fifth Amendment has been so extended, or can have State application. On the contrary, Your Honors have held that rights claimed under the first eight amendments,

adopted as restrictions of the powers of the national government are not protected by this clause.

O'Neill vs. Vermont, (Vt. 1892) 12 S. Ct. 693, 144 U.S. 323, 36 L. ed. 450.

It is, of course, true that there are opinions of this honorable court wherein the "due process of law" clause of the Fifth Amendment has been extended to apply to the States through the Fourteenth Amendment, by the clause of the Fourteenth Amendment, which guarantees to all citizens "due process of law" or "equal protection of the laws."

Under the due process of law clause of either the Fifth Amendment or the Fourteenth Amendment, we submit that law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the Constitutional requisite is satisfied. And due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of Government unrestrained by the established principles of private right and distributive justice. Caldwell vs. Texas, (Tex. 1891) 11 S. Ct. 224, 137 U.S. 697, 34 L. ed. 816. See also, Duncan vs. Missouri, (Mo. 1894) 14 S. Ct. 570, 152 U. S. 382, 38 L. ed. 485; Giozza vs. Tiernan, (Tex. 1893) 13 S. Ct. 721, 148 U.S. 662, 37 L. ed. 599; Leeper vs. Texas, (Tex. 1891) 11 S. Ct. 577, 139 U.S. 467, 35 L. ed. 225.

We also submit that the power of the Federal Court over State law is only to determine whether it is in conflict with the Constitution and laws of the United States, and that process in the States is regulated by the law of the State. See Walker vs. Sauvinet, (1875) 92 U.S. 92, 23 U.S. (L. ed.) 678.

In re Converse, (1891) 137 U.S. 624, 11 S. Ct. 191, 34 U.S. (L. ed.) 796. See also, Howard vs. Kentucky, (1906) 200 U.S. 164, 26 S. Ct. 189, 50 U.S. (L. ed.) 421.

We have previously covered all the law points involved as the basis of the petition for the writ of certiorari granted herein.

It is our understanding that only the questions specifically brought forward by the petition for writ of certiorari will be considered by Your Honors.

Rule 38, Page 30, U. S. Supreme Court.

We will, therefore, but briefly, discuss petitioner's typewritten brief, categorically, as follows:

(1) Jurisdiction:

Title 28, Section 344 (b), U. S. Code is authority for issuance of the writ of certiorari because it is alleged in the petition that petitioner has been denied protection of the "due process" clause of the Fourteenth Amendment.

(2) Statement of the case:

The legal history of the case from the indictment on September 5, 1945, through the filing

of his petition for writ of certiorari is exhaustively covered in this brief, supra, pages 2 to 6.

The physical facts concerning this murder which was committed on November 8, 1944, (Record P. 1) which was approximately ten (10) months before his indictment, are set forth in this brief only, supra, pages 7 to 8. Petitioner has never seen fit to acquaint Your Honors, either in his petition for the writ of certiorari or in his brief, with the horrible truth of the crime which he committed.

Counsel states on Page 2:

"* * * the evidence introduced against him consisted primarily of his own alleged confession."

Francis made two written confessions, both free and voluntary; one to officials of the State of Texas, at Port Arthur, Texas, the other to the Louisiana officials.

When arrested at Port Arthur, Texas, Francis had on his person the wallet removed by him from the person of his victim. Francis also took his victim's watch, which he sold in New Iberia, where it was recovered and he was identified by the owner of the jewelry store to whom he sold the watch. Francis stated he had obtained the pistol (and it's holster) by theft from an automobile. The pistol was identified by its owner. The holster was also identified by the owner. The pistol

and the holster were both recovered in Francis' presence at the location pointed out by him.

Francis stated he shot his victim five (5) times and there were five bullet wounds in the body of his unfortunate victim. This evidence of his guilt is overwhelming.

On Page 2 of this petitioner's brief it is also stated:

> "No stenographic record was taken of the trial so apparently no appeal was anticipated."

Is this an attempt to inveigle this Court to assume that Attorneys Parkerson and Mestayer, from the very outset of the trial, were deliberately violating their oath?

We respectfully inform this Honorable Court, that in thousands of criminal cases in Louisiana, no stenographic notes of the testimony of witnesses is taken for the legal reason, and no other, that under the Constitution of Louisiana, Article VII, Section 10, Appendix Pages 43-44-45, there can be no appeal on the facts.

The Jury is the sole judge of the facts. When a point of law is involved, objection is made, and when overruled, a bill of exception is reserved, the facts relating to the law point being incorporated in the bill of exceptions.

The next statement in petitioner's brief is:

> "(For the prosecuting attorney's version of what evidence was introduced at the trial, see Appendix 1)".

Appendix 1 of petitioner's brief contains only the last two and one-half pages of Mr. Pecot's statement before the Louisiana Board of Pardons. We attach hereto his entire statement (Appendix Page 53-101). This entire statement was given to petitioner's counsel, Honorable Bertrand deBlanc, by the Louisiana Board of Pardons, in June 1946.

As to "Specifications of Errors," we submit that the opinion,—the unanimous opinion, of the Honorable Louisiana Supreme Court speaks most eloquently for itself.

As to the "Argument of Counsel" in support of their untenable proposition that a second attempt to electrocute petitioner violates the Fourteenth Amendment:

We have already briefed the effect of both the Fifth and Eighth Amendment in relation to the Fourteenth Amendment, and the Fourteenth Amendment itself.

The Courts of Louisiana have the right to impose a sentence of death upon a conviction for the crime of murder. It is the Governor's mandatory duty to execute the sentence in the manner provided by law—electrocution. The sentence, as well as the petitioner, remains unexecuted.

What inalienable right has any citizen to escape the punishment of death provided by law for his crime? It is a fundamental principle of justice that the State or the United States can take the life of a citizen who murders another citizen.

The State of Louisiana in the year of 1940, adopted electrocution as the most humane method to execute the death penalty.

Francis has not paid the punishment fixed by law for his atrocious crime, and the law should take its course.

The function of the Executive Department of all government is to see that the sentence of the Court is complied with. We know of no law which permits any court to stay the hand of the executive branch of government when executing its full legal duty.

As to the "Argument" on "Point No. 11," your attention is respectfully directed that in his brief is the first time that this petitioner has ever contended that he did not receive a fair and impartial trial.

Your Honors would fruitlessly search the entire record in the Sixteenth Judicial District Court or the Louisiana Supreme Court to find any such prior contention.

On the contrary, as pointed out by the Louisiana Supreme Court (Record Page 29):

> "There is no irregularity shown in any of these proceedings. In fact, the relator does not contend that there was any irregularity in the indictment, trial, conviction or sentence."

Your Honors will find that this statement of the Louisiana Supreme Court is unvarnished truth.

While these questions were never urged in the Louisiana Courts and were not brought forward by the petition for the writ of certiorari and are not before you for consideration, and while we do not desire to unnecessarily burden Your Honors, we hope you will pardon us for feeling constrained to fully advise the Court.

Complaint is made that no attack is made on the indictment. How can a legal indictment be attacked? Counsel in their brief have never contended or shown any illegality therein.

Complaint is made that no motion for a change of venue was filed. How could such a motion have been sustained? There was no evidence, and counsel who wrote the brief have never offered any evidence in any Court on which such a motion could have been sustained. No such evidence ever existed.

Complaint is made that no evidence was introduced in petitioner's behalf. What evidence have these counsel for petitioner presented that could have been introduced? Certainly the duty of an appointed counsel is to see that his client obtains a fair and impartial trial, but if the client has no legal defense, surely the appointed counsel has no legal or moral right to manufacture a defense.

Complaint is made that no motion for a new trial was made. Counsel for petitioner's in their brief have not suggested any grounds upon which such a motion could have been predicated.

Complaint is made that no motion for an appeal was filed. We do not believe that any ethical practitioner of law should present a frivolous appeal which has no foundation in law. Counsel in their brief do not attempt to suggest the legal foundation for such an appeal.

As to the second paragraph of Page 11 of petitioner's brief the sovereign State of Louisiana and its duly elected officials have properly performed their duty.

We have already informed Your Honors the law of Louisiana as to stenographic records.

As to the repetitious statement in this paragraph "Obviously no appeal was contemplated and there was none," we inform Your Honors: The two counsel appointed by the Court on September 6th, seven (7) days in advance of trial were:

(1) James Randlett Parkerson, white, born 1879, a graduate of Tulane University admitted to the bar in the year 1900—a veteran criminal lawyer, whose integrity and ability has never been questioned, his decency without reproach. Mr. Parkerson has practiced law in the three parishes of St. Martin, St. Mary and Iberia, which comprise this Sixteenth Judicial District and before our Louisiana Supreme Court for almost half a century—a keen legal mind, alert and aggressive.

(2) Otto J. Mestayer, white, born in 1893, attended law school at both Tulane and Loyola Universi-

ties and admitted to practice in 1926. Mr. Mestayer, too, is a veteran of our Courts, has practiced law in Orleans Parish and the Parishes aforementioned for the last twenty years. Mr. Mestayer has an unblemished reputation for honesty and decency and is of outstanding legal ability and is so recognized in the legal profession.

Can Your Honors believe that men of this character deliberately sat Francis in the "electric chair," deliberately violated their oath and ravished justice? We think not.

Much stress is laid on Your Honors opinion in the case of Powell vs. Alabama, 287 U. S. 45. Your Honors undoubtedly recall this case as one of the "Scottsboro" cases. In the Powell case, the attorney appointed by the Court was appointed the *morning of trial*:

The same conditions do not exist here. Francis lived at St. Martinville with his family, there was no public clamor or hostility, and his counsel had ample time for preparation and trial. Evidence of Francis' guilt was overwhelming.

None of the present attorneys for relator were present at Francis' trial and, therefore, have no personal knowledge thereof nor have they ever presented any evidence to any Court that Attorneys Parkerson and Mestayer were ignorant, negligent or unfaithful to the trust imposed upon them by Honorable James D. Simon, District Judge. Judge Simon, born in 1897, attended Tulane University, admitted to the bar in 1918, became Judge in 1925. Judge Simon is an honorable

man, an outstanding jurist, and was highly praised by petitioner's attorney, Hon. Bertrand deBlanc in his plea for commutation to life imprisonment before the Louisiana Pardon Board. Surely counsel cannot expect Your Honors to believe that this eminent jurist would also sit idly by, let a citizen go to his death (and as a member of the Louisiana Board of Pardons, refuse him clemency) by reason of any attorney's or attorneys' ignorance, neglect or unfaithfulness to the trust which he imposed.

As to the "Conclusion", on Page 14 of petitioner's brief, a careful search within the limit of our ability has been made and we respectfully submit we cannot find any authority which would permit Your Honors to set petitioner free, the sentence being unexecuted, the punishment of death not having been inflicted.

We also respectfully submit:

We have been unable to find any authority reposed in Your Honors to remand this case to the District Court for re-sentence to a punishment less than death, commutation of sentence not being a power delegated to Your Honors.

The Louisiana Supreme Court has emphatically stated that there were no irregularities in this trial. No evidence or law has been offered to your Honors to contradict the Louisiana Supreme Court, and, we, therefore, respectfully submit there has been absolutely nothing placed before Your Honors for your consideration that justifies a remand for re-trial.

SUMMATION

The unanimous refusal by the Louisiana Supreme Court to grant a writ of habeas corpus or to grant supervisory writs of certiorari, mandamus and prohibition to compel the Sixteenth Judicial District Court to grant a writ of habeas corpus was legally sound for the following reasons:

(1) Petitioner was legally convicted for the crime of murder, having received a fair and impartial trial.

(2) A legal sentence of death was imposed.

(3) The Sixteenth Judicial District Court had jurisdiction of the offense and of the person of the petitioner.

(4) Governor Davis' mandatory death warrant was legally issued as provided by Article 569, (App. Page 49) of the Louisiana Code of Criminal Procedure.

(5) Petitioner is held by legal commitment for the crime of murder and for execution of his sentence to death.

(6) Article 1, Section 12, (App. Page 41,) of the Constitution of Louisiana was not violated as death by electrocution is not a cruel or inhuman punishment.

(7) Amendment 8—Constitution of the United States (App. Page 37) has no application to the States.

(8) Article 1, Section 9 of the Constitution of Louisiana (App. Page 40) was not violated as petitioner has not been put in "jeopardy" for the same offense.

(9) Amendment 5—Jeopardy Clause—of the United States Constitution (App. Page 36) has no application to the States.

(10) Amendment 14—Due Process Clause—of the United States Constitution (App. Page 38) was not violated as the law has been administered by a competent court of justice of the State of Louisiana, its law operating on all citizens alike and not subjecting any citizen to arbitrary exercise of the powers of Government.

(11) Article 1, Section 2 of the Constitution of Louisiana (App. Page 39) was not violated as petitioner has received due process of law.

(12) The Court was without authority to release petitioner from the sheriff's legal custody.

(13) The Court was without authority to pardon relator or to commute his sentence.

(14) The sentence of death is unexecuted, and it is the mandatory duty of the Governor of Louisiana to issue his death warrant in accordance with existing law.

We respectfully submit that the Honorable, the Supreme Court of the United States, should not set aside the sentence of death which is unexecuted, nor can this Honorable Court commute such sentence.

We, therefore, respectfully urge that this Honorable Court dismiss the writ of certiorari heretofore granted and recall its stay order, thereby permitting the State of Louisiana, through its Governor, to proceed with the orderly enforcement of its law.

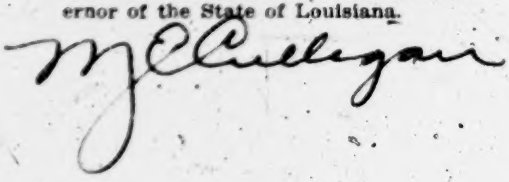
Respectfully submitted,

FRED S. LeBLANC,
Attorney General of the State of Louisiana, in proper persona.

L. O. PECOT,
District Attorney, Sixteenth Judicial District of State of Louisiana, in proper persona.

L. O. PECOT,
Attorney for Respondent E. L. Resweber, Sheriff, Parish of St. Martin, Louisiana, and Respondent, Honorable James D. Simon, Judge, Sixteenth Judicial District Court, Parish of St. Martin, Louisiana.

M. E. CULLIGAN,
Special Assistant Attorney General, Attorney for Respondent Hon. J. Emile Verret, Lt. Governor of the State of Louisiana, and Respondent His Excellency James H. Davis, Governor of the State of Louisiana.



APPENDIX

Constitution of the United States—Amendment #5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. * * *

Constitution of the United States—Amendment #8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Constitution of the United States—Amendment #14 —Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Louisiana (1921)—Article I—Section 2.

No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid.

Constitution of Louisiana (1921)—Article I—Section 9.

In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury; provided, that cases in which the penalty is not necessarily imprisonment at hard labor, or death, shall be tried by the court without a jury or by a jury less than twelve in number as provided elsewhere in this Constitution; provided further, that all trials shall take place in the parish in which the offense was committed, unless the venue be changed; provided further, that the Legislature may provide for the venue and prosecution of offenses committed within one hundred feet of the boundary line of a parish. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information; but the Legislature may provide for the prosecution of misdemeanors on affidavits; provided, that no person shall be held to answer for capital crime unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in actual service in time of war or public danger; *nor shall any person be twice put in jeopardy of life or liberty for the same offense*, except on his own application for a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained. (Underscoring Ours)

Constitution of Louisiana (1921)—Article I—Section 12.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. All persons shall be bailable by sufficient sureties, except the following: First, persons charged with capital offense where the proof is evident or the presumption great; second, persons convicted of felonies, provided that where a minimum sentence of less than three years at hard labor is actually imposed, bail shall be allowed pending appeal and until final judgment.

Constitution of Louisiana (1921)—Article VII—Section 2.

The Supreme Court, the Court of Appeal, and each of the judges thereof, subject to review by the court of which he is a member, and each district judge throughout the State including judges of the Civil and Criminal District Courts in the Parish of Orleans, may issue writs of habeas corpus, in behalf of any person in actual custody in cases within their respective jurisdictions; and may also in aid of their respective jurisdictions, original, appellate, or supervisory, issue writs of mandamus, certiorari, prohibition, quo warranto, and all other needful writs, orders and process, and where any of said writs are refused, the appellate courts shall indicate the reasons therefor.

Constitution of Louisiana (1921)—Article VII—Section 10.

The Supreme Court shall have control of, and general supervision over all inferior courts and shall have further jurisdiction as follows:

It shall have exclusive original jurisdiction in all disbarment cases involving misconduct of members of the bar, with the power to suspend or disbar under such rules as may be adopted by the court, and in suits for removal of judges of courts of record from office as elsewhere provided in this Constitution. It shall also have original jurisdiction for the determination of questions of fact affecting its own appellate jurisdiction in any case pending before it; and to that end may make such orders and decrees as it may deem proper in the premises.

It shall have appellate jurisdiction in civil suits where the amount in dispute or the fund to be distributed, irrespective of the amount therein claimed, shall exceed two thousand dollars exclusive of interest, except in suits for damages for physical injuries to, or for the death of a person, or for other damages sustained by such person or his heirs or legal representatives, arising out of the same circumstances; nor shall such appellate jurisdiction extend to any suit for compensation under any State or Federal Workmen's compensation law, or employer's liability act; provided, that appeals properly granted to the Supreme

Court, in such excepted cases, prior to the adoption of this Constitution, shall be finally disposed of by said court.

It shall have appellate jurisdiction of all suits for divorce or separation from bed and board, and of all matters arising therein; of suits involving alimony, of suits for the nullity of marriage, for interdiction, or involving the tutorship of minors, or curatorship of interdicts, or the legitimacy, or custody of children, and of matters of adoption and emancipation.

It shall have appellate jurisdiction in all cases wherein the constitutionality or legality of any tax, local improvement assessment, toll or impost levied by the State, or by any parish, municipality, board, or subdivision of the State is contested, or where the legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board or subdivision of the State shall be in contest, whatever may be the amount thereof, and in all cases wherein an ordinance of a parish, municipal corporation, board, or subdivision of the State, or a law of this State has been declared unconstitutional. Its appellate jurisdiction shall also extend to all cases involving homestead exemptions irrespective of the amount involved, and the appeal on the law and the facts shall be directly from the court in which the case originated to the Supreme Court; except that in cases involving only movable property, the appeal shall lie

to the court having jurisdiction of the amount or the value of the property involved.

In all civil and probate cases where the Supreme Court is given appellate jurisdiction, the appeal shall be both upon the law and the facts.

The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed.

Louisiana Criminal Code—Act 43 of 1942—Article 30.

Murder is the killing of a human being,

(1) When the offender has a specific intent to kill or to inflict great bodily harm; or

(2) When the offender is engaged in the perpetration or attempted perpetration of aggravated arson, burglary in the nighttime, burglary in the daytime, aggravated kidnapping, aggravated rape, armed robbery, or simple robbery, even though he has no intent to kill.

Whoever commits the crime of murder shall be punished by death.

Louisiana Code of Criminal Procedure—Act 2 of 1928—Article 567.

No person sentenced to death shall be executed until a certified copy of the indictment, verdict and sentence shall have been sent to the governor, and a warrant shall have been issued by him, under the seal of the state, directed to the sheriff of the court wherein the sentence or judgment was passed, commanding the sheriff to cause the execution to be done on the person so condemned in all things according to the judgment against him, and upon the date named in said warrant.

Louisiana Code of Criminal Procedure—Act 2 of 1928—Article 568.

The sheriff of the parish in which said execution is to take place, or a duly authorized deputy, or a competent person selected by him, shall execute the criminal in conformity with the death warrant issued in the case. Until the time of his execution the convict shall be kept in solitary confinement at the parish prison, and no one shall be allowed access to him without an order of court, except the officers of the prison, his counsel, his physician, his spiritual adviser, his wife, children, father, mother, brothers and sisters.

Louisiana Code of Criminal Procedure—Act 2 of 1928—Article 569.

Every sentence of death imposed in this state shall be by electrocution; that is, causing to pass through the body of the person convicted a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of the person convicted until such person is dead. Every sentence of death imposed in this state shall be executed at the parish prison of the parish in which the crime was committed for which said person was convicted, or in the parish to which venue has been changed, or when electricity is not available in the parish prison where an execution is to be performed, the sheriff, with the consent of the governor, may change the place of said execution to an adjacent parish, and shall be inflicted within the walls of the parish jail in a room entirely cut off from view of all except those permitted by law to be in said room.

Louisiana Code of Criminal Procedure—Act 2 of 1928—Article 570.

Every execution of the death sentence shall take place in the presence of the sheriff of the parish or one of his duly designated deputies, the coroner of the parish and a physician summoned by the sheriff to be present, the operator of the electric chair, a priest or minister of the gospel if the convict so requested and not less than five nor more than seven other witnesses all citizens of the state of Louisiana; no person under the age of twenty-one. (21) years of age shall be allowed within said execution room.

Louisiana Code of Criminal Procedure—Act 2 of 1928—Article 571.

When the sentence shall have been executed, the sheriff or his deputy performing the execution, shall make a process verbal of said execution immediately thereafter, which proces verbal shall recite the manner and date of said execution and shall be attested by said sheriff, or his deputy, and by all of the witnesses and said proces verbal, when so signed, shall be filed with the clerk of the court in which the sentence shall have been imposed.

UNITED STATES SUPREME COURT RULES

Excerpt from Rule 38, paragraph 2, page 30:

* * * Only the questions specifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27.) A failure to comply with these requirements will be a sufficient reason for denying the petition.

Application filed by Willie Francis, represented by Honorable Bertrand de Blanc, Attorney, before the Louisiana Pardon Board, upon which hearing was held May 31, 1946, and application denied June 1, 1946.

PETITION FOR EXECUTIVE CLEMENCY

TO THE HONORABLE, THE BOARD OF PARDONS FOR THE STATE OF LOUISIANA

The petition of WILLIE FRANCIS, a resident of the Parish of St. Martin, with respect shows:

1.

That he attaches hereto and makes a part hereof his prison record as certified to by Sheriff E. L. Resweber of the Parish of St. Martin, and by Sheriff Gilbert Ozenne of the Parish of Iberia, all in accordance with the rules covering applications for executive clemency. Said copies marked and identified as Exhibit "A".

2.

That petitioner urges that the Board of Pardons is the instrument set up by law to handle the type of case hereinafter set forth by your petitioner.

3.

That on September 5, 1945, petitioner was indicted for the crime of murder; that on September 13, 1945 he was convicted of said crime; that on September 14,

1945 he was sentenced to be electrocuted for said crime; all more fully set out under the cause entitled State of Louisiana vs. Willie Francis, No. 2161 of the Criminal Docket of the Parish of St. Martin, Louisiana. A certified copy of which is annexed hereto and made a part hereof as Exhibit "B".

4.

That based upon said above proceedings a mandatory Death Warrant was signed by His Excellency, James H. Davis, Governor of the State of Louisiana on March 26, 1946 calling for the execution by electrocution of your petitioner between the hours of 12 P.M. and 3 P.M. on the 3rd of May, 1946. Said warrant is now in the possession of His Excellency James H. Davis, Governor of the State of Louisiana.

5.

That your petitioner Willie Francis in accordance with said Death Warrant and on the morning of the 3rd of May, 1946 was brought from the Iberia Parish Prison to the St. Martin Parish Prison. That between the hours of 12 P.M. and 1 P.M. your petitioner was placed in the official electric chair of the State of Louisiana; that he was strapped thereto; that the necessary wires were attached to his body in the regular manner; that after all the necessary steps had been taken the official electrocutioner, an expert, turned on the switch and a current of electricity was caused to pass through the body of your petitioner, all in the presence of the official witnesses.

6.

That your petitioner through an Act of God lived through the electrocution; that petitioner believes that it was the hand of the Lord that stayed his death.

7.

That letters and telegrams received by your petitioner attest that men and women throughout the United States also believe that the failure of the electric chair to kill him was an Act of God, and these good men and women who wrote and telegraphed him also hope that he would not be electrocuted again

8.

That in the several cases in which the hanging of a convicted person resulted in failure, the person was either pardoned or the sentence commuted to life imprisonment.

9.

That men and women throughout the Country have sent in telegrams and phone calls to the Governor of the State of Louisiana urging him not to electrocute your petitioner again.

10.

That petitioner was only 15 years of age at the time the crime was committed.

11.

That by Act of the Legislature of Louisiana, capital punishment was changed from hanging to electrocution. That the reason for which the method of execution was changed was to provide a more humane, quick, and sure method of electrocution. The Legislature believed or had reason to believe that they were providing a quick, sure and more humane method of execution. But to begin executing a man one week and not finish the job until several weeks later is neither sure, nor quick, nor humane.

12.

That another electrocution might be just another practice shot; that this should not be the policy of the State of Louisiana.

13.

That petitioner knows of no case either in this State or in any other where a person has ever gone to the electric chair twice for the same offense.

14.

That it would be barbaric, cruel, inhuman and un-Christian to electrocute him again; that it would be contrary to our ideals of decency.

15.

Petitioner is not urging that he be set free. He only asks that his sentence be commuted to life imprison-

ment. That in view of the fact that he has been electrocuted and has suffered the torture of death and has stood on its threshold without crossing it, he should not have to go through it again. Petitioner knows that life in the penitentiary is not a pleasant thing but he would rather go there than back to the electric chair. Petitioner knows what it is to be bound hands and feet to a chair, to have a mask placed on his face, to be told goodbye, to have the electric current turned on, to be on the doorsteps of death.

16.

That the legal question of whether or not your petitioner can again be placed on the electric chair and executed is a moot one. The Courts have not decided that question; That the Acts of the Legislature are silent on the subject; that therefore the question rests in Equity. Who is in a better position to decide what is equitable than the Board of Pardons to whom the power has been granted by the Legislature to recommend a commutation in cases which deserve it. You the Board of Pardons are in a position of paramount importance today: People everywhere are wondering here in America, if it is possible to begin electrocuting a man one week and finish with him a few weeks later. Our enemies in the late war have used that method of prolonging agony. Yes, people are wondering everywhere whether justice and equity will be done in the State of Louisiana. And you are in the enviable position of one who can say to the rest of our sister States:

"Yes, Justice and Equity are not only the brilliant stars they always were in this State but they will shine more luminous than ever because we are recommending that this negro's sentence be commuted from death to life imprisonment. He shall not have to sit in the electric chair again. The voice of no man shall rise from the grave to mock justice in this State nor shall the blood of any man stain her fair name."

WHEREFORE, petitioner prays that, all the above facts considered, he be granted executive clemency and that his sentence be commuted from death to life imprisonment.

(s) Bertrand de Blanc
BERTRAND DE BLANC
Attorney for Petitioner

STATE OF LOUISIANA
PARISH OF IBERIA

BEFORE ME, the undersigned authority personally came and appeared WILLIE FRANCIS who after being duly sworn did depose and say:

That he has read the foregoing petition, that all the allegations therein contained are true and correct.

(s) Willie Francis
WILLIE FRANCIS

Sworn to and subscribed before me, this 13th day of May, 1945.

(s) S. J. Segura
DTY. CLERK & NOTARY PUBLIC

LOUISIANA PARDON BOARD HEARING, MAY 31, 1946.

Testimony of Dennis D. Bazer, Warden, Louisiana State Penitentiary, Angola, Louisiana.

QUESTION BY THE BOARD:

Q. Mr. Bazer, your name is Dennis J. Bazer and you are Warden of the Louisiana State Penitentiary?

A. Yes, sir.

Q. Do you have any statement to make to the Board on the facts on this application?

A. The only statement I could give is to the operation of this chair and what part I have to play with it—along that line, Judge. Usually I go with the chair myself. On this occasion I did not go—it would have made no difference if I did or did not but I sent Captain Foster in charge. The chair is kept at the penitentiary. Mr. Esnault is our chief electrician and he keeps the chair up and whenever he takes the chair out to the one that is carrying it I sent the electrician along with him. I sent this time Vincent Venezia, who is an inmate, with Captain Foster. The electricutioner, who lives in Shreveport, has nothing to do with that—all he does is apply the switch and the chair is supposed to be checked out when it leaves the penitentiary in good shape and, of course, if something goes wrong with the wiring or anything on the way—of course—I am not enough electrician to explain that. Anyhow, that is how it is handled whether it is proper or im-

proper, I don't know. There has been a whole lot said about this case and a lot of newspapers and letters wrote all over the country so I was over in Houston week before last at the Wardens' Convention and was talking to the Superintendent from Huntsville and he said that he had a similar case to this and I asked him how it happened and he told me the best he could, so when I was summoned by the Pardon Board to come down here to this hearing, I had my secretary call the superintendent over there to give me what information he could on that particular case so I had a letter from him this morning and, if you would like to see it—a short letter here and the facts are in there, and if you would like to see this letter or have me read it, I can do so.

Q. Is it addressed to you?

A. Yes, sir.

BY THE BOARD:

You may read it—I would like to hear it, whatever it is.

A. This is from the Texas Prison System, Huntsville, Texas.

"May 29, 1946.

Hon. D. D. Bazer, Warden, Louisiana State Penitentiary, c/o Attorney General's Office, New Court Bldg., New Orleans, La.

Dear Warden Bazer:

At the request of Mr. Winkle of your institution I am giving you below all of the facts available regarding the delay of the execution of a man in Texas when the motors and generators used in

electrocutions failed to function. This happened in the month of April, 1938. John W. Vaughn was received at the state penitentiary at Huntsville, Texas, on March 8, 1939 from Bexar County, and his execution date was fixed by the court as April 22, 1938. Early on the morning of April 22, 1938 Vaughn was led to the execution chamber and strapped in the electric chair. For some reason the electrical appliances failed to function, and after several trials the warden called the governor, who at that time was the Honorable James V. Allred and advised him of the situation. The governor advised the warden that he was granting the condemned man a stay of execution of seven days, this being confirmed by a telegram the next day, and later by a proclamation issued by the governor. The one week stay of execution fixed the execution date as April 29, 1938. On the date of April 28, 1938, the judge of the District Court of Limestone County, which is the seventy-seventh district court of the State of Texas, a temporary restraining order was issued by the District Judge restraining the prison officials from carrying out the mandate of the court which fixed Vaughn's execution date as of the twenty-ninth of April, 1938. On being advised of this temporary restraining order Governor Allred granted an additional twenty-four hour stay of execution. The matter was then called to the attention of the District Court in Bexar County, which Court had originally sentenced Vaughn to be executed, who immediately dissolved the restraining order issued by the District Court of the seventy-seven judicial district. It was then the opinion of the prison of-

ficials that the matter was all clear so Vaughn was duly executed in the early morning of April 30, 1938.

I am enclosing herewith several sheets which I have removed from a book or pamphlet which we call a compilation and codification of the constitutional provisions and laws of the State of Texas applicable to the Texas Prison System. Since Mr. Winkler advised that your hearing on your Louisiana case was to be held on Friday I am doing this hurriedly and hope that nothing has been overlooked that would be of any help to you.

Trusting that this will reach you in good time and that it will be of some help, I remain,

Very sincerely yours,

(Signed) D. W. Stakes, General Manager
Texas Prison System."

Here is a pamphlet of the laws there—you can file it in evidence. On this occasion, when this execution was to take place, Governor Davis happened to be at my residence, when the officers called me. The sheriff called me that the chair had failed to work. I called it to the attention of the Governor—he said "well, we will just stay this execution" and he started to fix another date and I had another execution at Leesville on that date and I told him to put it off—that I could not make the two on the same day, so he did. That is all I know about this case. I would like to explain—

Q. You don't know just what happened to that electric chair?

A. No, sir. I have an electrician here.

QUESTION BY MR. PECOT:

You have been warden for how long?
A. Six years.

Q. Was that the first time a chair failed to operate.

A. Yes, sir and it has operated since then.

Testimony of Dr. S. D. Yongue, Coroner of St. Martin Parish:

QUESTION BY THE BOARD:

You are the coroner of St. Martin Parish, are you not? Your duties are—

A. S. D. Younge—Coroner of St. Martin Parish.

Q. Doctor, were you present at this date set for the execution of Willie Francis?

A. I was.

Q. Will you tell us what you know about what took place on that date, as far as you are concerned as coroner?

A. As coroner I was watching the procedure of the execution. Willie Francis was strapped in the chair—the appartus placed in position and a blindfold passed over his eyes with a slit in it whereby he could breathe through his nose. I watched him and I saw—it looked like a man throwing a switch over there—it sounded like it. Nothing special happened right away, then I saw the chair move around two or three times; something seemed to go wrong—there was no further movement of the chair. He threw the switch off

and waited a minute and it seemed that he threw it back on again—nothing special happened right away. Directly the chair swinged around a little bit and the blindfold slipped on his face and he says "take this off I cannot breathe" and I heard somebody say "you are not supposed to breathe" and he said "I am not dying" and after that he was removed from the chair—the switch was thrown off. Some officer had him by the arm and they walked out into another room. As Coroner of the Parish I supposed it was my duty to examine him afterwards, which I did and found nothing wrong with him except that his pulse was a little bit fast—I took my stethescope and examined his chest—I listened to his heart beat which was perfectly normal except a little bit accelerated, which could easily have been from apprehension or being excited but I found no serious impairment. I then left.

QUESTION BY BOARD:

Doctor, did you find any marks showing any burns?

A. I did not. I examined his forehead and his chest and I saw his legs. Neither did I smell any odor of burned flesh.

Q. Did he complain of any physical pains about the head or legs?

A. He did not speak to me at all.

Q. May I ask if you noticed, from his demeanor following the attempted execution, anything from which you could gauge any mental or physical reaction?

A. No. When I followed him into the room where they had carried him somebody else was talking to him. I stopped—examined his chest—examined him with my stethescope so as to be able to report to your Excellency what I had discovered but he did not talk to me, neither did I talk to him.

Q. Dr. Yongue, was there another physician present as the law requires, besides yourself?

A. Yes, sir. Dr. Deuilily.

Q. Did he or you make the examination of Willie Francis after the attempted execution, or did you alone?

A. I made the examination alone. I understood that Francis was taken into the other room—I saw him and then I did not see him any more. He did not come into the room while I was there. I am of the opinion that he left immediately and went home, but I stayed to examine him as I considered it my duty.

Q. Was there any evidence of physical pain whatever?

A. I did not discover any.

Q. Did the defendant complain of any pain at the time you examined him?

A. No.

Q. Who took him away—do you know, Doctor. Whose car was he in?

A. There were two or three officers. I don't remember just who they were. It is my opinion that he was still in charge of the Sheriff from New Iberia at the time and also some State policemen. I don't remember just who.

Q. Doctor, had there been any evidence of burns on his head which would permit the application of electrons? As the result of your examination, would you have seen those marks.

A. I watched that when they took the strap off his legs and did not see any. I did not examine the back part of his leg but the front part had no marks. If there had been any marks I probably would have seen them, yes.

BY THE BOARD:

I think that is all, doctor.

Testimony of Captain E. Foster:

QUESTION BY THE BOARD:

What is your name, Captain.

A. E. Foster.

Q. Are you the electrician in charge of the electric chair?

A. I am not an electrician. I go with the chair —I have been going with it for quite a while. I am in charge of it.

Q. Did you go on this occasion? Were you present at the time?

A. Yes.

Q. Will you tell us just what happened.

A. We set the chair up and it worked perfect and when you throwed the main switch on there the needle went back to zero. There was a short-

age—a little wire was loose and the current went back into the ground instead of going into the nigger.

Q. Captain, did you test the machine after it arrived at the courthouse—there in St. Martin Parish.

A. Yes, sir.

Q. You tested it out that morning and you said it worked perfectly?

A. Yes, sir.

Q. The machine was not worked on until the electrocution?

A. No, sir. That wire being loose there causing a shortage had nothing to do with the charging up. It would charge perfectly but when the main switch was thrown in, instead of the current going into the man, it went into the ground.

Q. Are you electrician enough to know whether any electrons went through the body of Francis?

A. None went through the man.

Q. Where did that charge go?

A. It went down to the ground. The shortage caused the charge to go down into the ground instead of into the man.

Q. Captain Foster, the Coroner testified that the defendant moved around in the chair. I want to ask you if the chair is made stationery or fastened to the floor?

A. It is not.

Q. Is it possible for the defendant to move his body in the chair?

A. Yes, sir. He can move the chair with his foot down on the floor.

Q. Were those electrons attached to the body on the head and left leg?

A. On the top of the head and on the left leg.

Q. Did you look at his head afterward?

A. Yes, I did.

Q. Was there any evidence of burns?

A. No, sir.

Q. How about his legs?

A. No, sir.

Q. In other executions, after it was over, was there any evidence of burns on the head or legs?

A. Yes, sir.

Q. Did you see any in this case?

A. No, sir.

Q. There was some evidence or statement that this defendant was tickled in some way or had some sensation as the result of the switch. Were there any electrons which passed through his body?

A. I do not think so—if any had had gone through his body we could tell it. If you had seen as many as I have, you could tell that.

Q. There was a statement that his lips protruded.

A. That could have been caused from that band around his mouth being tight.

Q. Describe that band—just what is the purpose of it?

A. It goes over his mouth and leaves his nose out.

Q. Do you know if it is buckled back to the head to keep it in place?

A. I think so.

Q. The Coroner testified that, after the defendant moved about somewhat in his chair, his head became loose in some way.

A. It could have—I did not notice it.

Q. You were outside?

A. No sir, I was inside signalling to the outside.

Q. Where is the switch, inside or outside.

A. The truck is outside—the switch is inside of the room.

Q. You saw Willie Francis after the switch had been thrown twice?

A. Yes sir—helped unbuckle him from the chair.

Q. Was there any evidence at all that he had received a charge of electricity?

A. No sir.

Q. Was he able to walk at that time?

A. Yes, sir. He got up and walked.

Q. He was talking?

A. He said "take this off my face I can't catch my breath".

Q. Did he ever say anything about suffering physical pain from the application or non-application of electricity?

A. No sir.

BOARD:

That is all.

QUESTION BY BOARD:

Who was the gentleman who went over with the machine?

A. Vincent Venezia.

Q. Did Willie Francis say it tickled him when he got off the chair?

A. I did not hear him say that.

Q. You followed him to the place?

A. No, I just took him out of the chair.

ATTORNEY TUREAUD:

Is it not possible that he received electrons without killing him? Is it not possible that an electron did shock him?

A. I don't think so.

Q. Is it not possible that an electric current would shock him without killing him?

QUESTION BY BOARD:

Is it impossible that electric current did not reach his body?

A. I would say not.

ATTORNEY TUREAUD:

But you would not say sure?

A. No, I would not say sure.

Testimony of Vincent Venezia—Inmate of Angola Penitentiary:

QUESTION BY BOARD:

You work out of Angola?

A. Yes, sir I am an inmate. I am an electrician under Mr. Esnault.

Q. You usually do that?

A. Yes, sir.

Q. How long have you been at that kind of work?

A. Since they used the chair.

Q. Tell what you know about this case.

A. When I got there we unloaded the chair and the switchboard.

Q. What time was that?

A. We started about 8:30 to unload. We put it up in the courthouse where the electrocution come off and I hung it all up and go downstairs and stopped my engine and made my test and set the voltage at 2500 and test my ampmeters—A.C. and D.C.—and see that they all work perfectly. Then I run it for about five or ten minutes and see about my engine and generator and see if it is working good and turn it off. Left it until about ten minutes to twelve.

Q. In other words, you tested the machine that morning and it tested perfectly and then you made no adjustment on the machine?

A. Yes, sir.

Q. You stayed there all the time?

A. No, sir. I stayed with the truck and inspected the wires running from the truck through the window to the switchboard.

Q. The truck is on the ground and you insert wires up through the window into the Parish Jail?

A. Yes, sir.

Q. After you test the machine and from then until the electrocution you remain with the truck —did anyone tamper with it?

A. No, sir.

Q. You did not see anyone tampering with it?

A. No, sir.

Q. Captain Foster referred to signalling to you. Tell us what you know.

A. Well, Captain Foster, after he threw the switch on the machine, signalled to me to give him more gas—that is more power on the engine so he could raise the voltage, to run it up to 2500 volts and I done so but he hollered to me and told me it would not work so I shut the engine down and go upstairs and checked over it and checked it thoroughly and found one of the wires broke loose and I just figured it hit the ground. From the switchboard to the outside to the ground had broke aloose and it all went back to the ground.

Q. Are you prepared to state, as electrician, that no current whatever passed through the body of Willie Francis?

A. Yes, I would say that no current went through the body of Willie Francis—if it had he would not have been able to walk to his cell. Any time electricity hits you you are going to be weak or fainted. You are going to be too weak.

Q. In other words, it produces a certain amount of shock.

A. Yes, sir. I was the one who took the strap off him. I said "how do you feel" so I walked pretty near to the door with him and I asked him "did you get shock at all". He said "no, sir".

Q. Did he claim that the current tickled him?

A. No, sir. I asked him how he felt when I unbuckled him and I asked him "were you hurt" and he said "no, sir". I then took my board down.

Q. Did you take occasion to examine his left leg and head?

A. He was not burned.

Q. In previous executions, were there evidences of burns on the head and leg?

A. If it hits them you can tell it. You can see the rim of the cap which touches him. We put gauze dipped in salt water and shoot the electricity through—it dries it up and when it dries it shows a real burn.

Q. Did you do that in this case?

A. Yes, sir. The gauze was not dry at all either on the leg or head.

BOARD:

That is all.

ATTORNEY TUREAUD:

Do you know positively when that wire got loose—whether it got loose before the switch was turned on or after?

A. I figured that wire got a loose connection and worked off and just when he throwed the main switch it broke loose and hit the ground.

Q. You don't know positively when it broke loose?

A. No, sir. I am not positive.

BOARD:

That is all.

Testimony of U. J. Esnault, Chief Electrician, Angola, Louisiana.

QUESTION BY BOARD:

What is your name?

A. U. J. Esnault.

Q. Are you an electrician?

A. Yes, sir.

Q. Chief Electrician at Angola?

A. Yes, sir.

Q. Did you go on this trip?

A. No, I did not go but we tested the machine at first.

Q. Do you usually go?

A. No, I usually send my assistants.

Q. You keep the electrical end of this chair in good condition? You are the one who is in charge of that?

A. We generally test them with a load to see if the load goes.

Q. That was the day before?

A. A couple of days.

Q. Did you check the machine at that time?

A. Yes, sir. It was O.K. then.

Q. Do you know if the machine worked after?

A. He (Venezia) found the wire broken and put it back himself.

Q. It was back in working condition when it came back to you? Was that machine used the following day?

A. Yes, sir. At Leesville.

Q. Did it work satisfactorily.

A. Yes, sir.

Q. Was that the first time the chair failed to work?

A. Yes, sir.

BY THE BOARD:

That is all, sir, thank you.

Testimony of Mr. E. L. Resweber, Sheriff, St. Martin Parish.

QUESTION BY THE BOARD:

Sheriff, were you there during the whole procedure?

A. Yes.

Q. Will you tell us, in your own words, just what happened.

A. Well, Willie Francis was strapped on the chair and the switch was put on. He squirmed around a little bit and rocked the chair and asked to "take it off" and, in a minute or two interval, "take it off" and said "I cannot breathe" and by that time the executioner asked Captain Foster to get in touch with the Warden. That was between twelve and one o'clock—just after 12—so I went along with Captain Foster and we used the telephone in my office and got in touch with Bazer and he, in turn, connected us with Governor Davis. We told the Governor about our trouble and he ordered me to stay the execution until the following Friday. Then later, of course, he figured we had another execution going on on the following Friday and set the date for the following Thursday instead and further granted him a 29 day reprieve—Governor Verret granted him a 29 day reprieve. I was not present when the man was taken off the chair but I saw him going out in the custody of Sheriff Ozenne and some of his deputies and Captain Wright, with the State Police, and then went on into New Iberia where he has been

kept in custody for safekeeping and he was walking apparently alright, however, I did not examine him.

Q. You know the defendant, Willie Francis, fairly well, don't you?

A. Very well.

Q. Did you have any conversation with him after the attempted electrocution.

A. Except on his way out—I asked him what happened.

Q. What did he say?

A. He said "the Lord was with me that time".

Q. Did he complain of any pain?

A. No, he did not.

Q. Was he walking alright?

A. Apparently alright.

Q. Sheriff, are you familiar with the arrest of Willie Francis and the incidents thereafter which occurred in connection with any confession he may have made to any official?

A. You mean in Texas, Judge.

Q. In Texas and Louisiana.

A. He admitted assaulting and robbing a white man in Port Arthur, Texas.

Q. Is there an outstanding warrant for him?

A. I have a warrant right now to hold him in case he should be let free.

Q. What was the date of that alleged crime—was it subsequent or prior to the alleged killing of Andrew Thomas.

A. Several months after.

Q. Warrant for robbery by assault?

A. He is wanted in Port Arthur now.

Q. Well, did you go get him.

A. Yes, sir.

Q. Did he make a confession to you either on your way back. In Texas, or after you got back to Louisiana.

A. On my way back to Louisiana. Yes, sir.

Q. Did he, in that confession, admit the killing, or murdering, of Thomas?

A. Yes, sir. He showed us where he threw the gun away—where we had already found the gun —showed us where he had thrown the holster away in the culvert back of the railroad tracks back of the Thomas place.

Q. Did he say where he obtained the pistol and holster with which he killed Thomas.

A. He stole that gun from one of my deputy's car.

Q. Did he admit stealing it?

A. Yes, sir.

Q. How many times did he admit shooting Thomas?

A. How many times he shot him? Five times, I think it was.

Q. Did he explain just how he went about shooting Mr. Thomas. Tell us about that.

A. He went to Thomas' home pretty early. Mr. Thomas went home early. He was not long—

Q. You are taking this from his confession?

A. Yes. He was waiting behind his garage for three hours. When Mr. Thomas came in and was closing the door of his garage he shot him.

Q. Tell how he shot him—was he shot standing?

A. He said standing, yes sir.

Q. Did he say, after he shot Thomas one time, that Mr. Thomas fell to the ground.

A. He did not say—he said he was standing all the time.

Q. Did he tell you that after he shot Thomas he took his wallet and watch?

A. By the way, we recovered that same watch at Rivere Jewelry Store in New Iberia. Willie Francis showed us—took us to the jewelry store to the man—the man was not so sure about buying such a watch but he looked up his cash book and found where he had made a purchase of $5.00.

Q. How long was that?

A. That was soon after we brought him from Texas. That was about eight months after. Mr. Rivere did not remember him at all but Willie Francis said "I sold you that watch for $5.00" and several days after Mr. Rivere found the watch case that had initials on the back. We could not have made a mistake as to the identify of that watch.

Q. Was there any movement in the watch?

A. They had removed the movement and Mr. Rivere tells us that the movement was placed in a

new case sold at the time—during the war watches were hard to get.

Q. What we would like to know, sheriff, is, after this defendant made the confession, did you take it at face value or check it,

A. I checked every angle of the confession and it checked out.

Q. Did you take him with you to the place he sold the watch?

A. Yes, sir.

Q. What about the holster?

A. The holster also—the holster, gun and watch.

Q. What about the wallet?

A. They found the wallet on his person in Texas that he admitted taking from Thomas.

Q. Did he ascribe any reason as to why he shot Thomas?

A. He first told us he had had a little trouble with Thomas and then later on he said he had no trouble with Thomas—that Thomas was a fine fellow but that he did not know why he did it.

Q. Has he ever denied his guilt?

A. He never did.

Q. Did he appear as repentful or sorry for his deed after you had him?

A. No, sir.

Q. What was his general attitude?

A. He did not care.

Q. Sheriff, there is some testimony here about a fifteen year old boy. For the benefit of the record, what is the physical makeup of this Willie Francis as far as physical development is concerned?

A. He is fully developed. He is about five feet eight or nine inches tall, weighs about one hundred fifty or one hundred fifty five pounds, is a well built boy.

Q. What would you, not knowing his age, give him from all appearances?

A. About nineteen or twenty—maybe twenty-one.

Q. You conclude that from his physical appearance?

A. Yes, sir.

ATTORNEY TUREAUD:

You did not have to use any force to get a statement from him?

A. Everything he told me was voluntary.

Q. Voluntary?

A. He showed no nervousness.

Q. Does he appear to be normal to you?

A. Yes.

Q. You have had quite a number of men in custody. Does he act like a man who is a killer?

A. That is the first killer I have had in my custody. He looks absolutely normal to me, I am not saying that for any reason—I have nothing against the boy.

QUESTION BY BOARD:

Did he tell you about the robbery in Texas?

A. Yes, I did not question him about that. They have a written confession.

Q. Did he admit to you the details of that affair in Texas?

A. No, sir. Not in detail.

Q. Do you know what kind of instrument he used?

A. The officials there told me—he did not tell me.

Q. Was the man there badly hurt?

A. He was unconscious for a few days.

Q. You say in physical development he was about 19 years old. Would you say physically and mentally.

A. Mentally, I don't know. I would say yes.

Q. You do not know if he is physically and mentally developed as a boy of 19?

A. Yes, sir—in every way—mentally and otherwise, yes sir.

ATTORNEY TUREAUD:

Mentally and physically 19.

A. According to my observation, yes sir.

Q. You did not know he was 15—you were surprised when you heard he was 15 years old?

A. I was surprised—I went so far as to get a baptismal certificate on him.

MR. PECOT:

Sheriff, does he read and write?

A. He does read and write.

Q. Is not it a fact that, after Andrew Thomas was murdered, the whole town was astir over this happening. Was not there a great many rumors flying fast and thick, day and night, which you were trying to run down—you and the State Police.

A. Yes, sir. It kept us busy for eight months, night and day.

Q. Is it not a fact that that boy, who had killed and murdered Thomas on November 8th, 1944, remained in the town of St. Martinville, passing in front of your home, while working for Bullot.

A. Yes, sir.

Q. Is it not a further fact that he only left to go to Texas about the month of February or the early part of March, 1945, when matters had sort of calmed down and you were still working on the case?

A. I would not be able to tell you the exact time he left but I know it was a few months after the murder was committed.

SHERIFF PECOT:

That is all.

QUESTION BY THE BOARD:

Was there any other statement made by Willie Francis implicating any other person when he was in your custody?

A. I believe he was in Iberia Parish jail when he made that statement.

Q. Was that statement made to you.

A. Yes, sir. He gave me names of two colored boys and told me where they lived—who they were and where I would find them. I run that down and he gave me some fictitious names. There was nobody by those names and after, finally said that he was just fooling that he was the only one committed that murder.

Q. Did his statements possibly involve the well being of someone else, possibly.

A. What was that?

Q. Did any of his statements made to you involve the life or well-being of other people. In other words, did he make any statements to you involving other people?

A. No, not to me. It was said—it was rumored—but so many rumors were going around that 99½% of them were not true. Just rumors. He did not make any such statement to me.

Q. I think that is all, unless there is something else you wish to say.

Testimony of Sheriff Gilbert Ozenne of New Iberia.

QUESTION BY THE BOARD:

You are Sheriff of Iberia Parish?

A. Yes, sir.

Q. What do you know about Willie Francis' case, Sheriff?

A. What I know is that I am keeping him for Sheriff Resweber, in New Iberia and I happened to take him to St. Martinville the day of the electrocution.

Q. You did not have him before that day?
A. Yes, he had been in jail five or six months.

Q. Before that?
A. Yes.

Q. Did you find any difference in his general attitude since the attempted execution?
A. No, sir.

Q. Does he appear repentant and sorry for his deed?
A. He is about the same. He was a little nervous for a day or two after the date of the execution.

Q. Was he in your custody when he was removed from the electric chair to the adjoining room?
A. Yes, sir. I took him in the room myself.

Q. Did he appear shocked?
A. He was just a little nervous and shaky and I asked him how he felt—he said "alright". The doctor examined him.

Q. Did he appear to be sick for a day or two?
A. No. When I took him back and asked him if he wanted to eat he said he was hungry. I asked the jailer to feed him and he had a very good meal.

Q. Was he contacted that afternoon?
A. Yes, sir. I went there at five and saw him at five and seven and he was feeling alright.

Q. When did the press contact him—that night? Was that the picture published in the newspapers around the area of that district?
A. Yes, sir.

Q. Sheriff, did he show any ill effects when you saw him?

A. No, sir. He walked the same way he walked to come.

Q. Did he make any statement on the outside?

A. Yes, sir.

Q. Who did he speak to?

A. I don't know who he spoke to but he cursed a couple of fellows while I was taking him to the car. They talked to him and he cursed them.

Q. You mean these people on the grounds there? They talked to Willie Francis?

A. Yes, sir. You know, passed some remark—said "that is the fellow". He answered them back.

Q. When he answered them back he cursed them?

A. Yes, sir.

Q. Do you know who those people were?

A. No, sir.

Q. Were they officials?

A. No, sir.

Q. Did he complain to you of any physical suffering as an aftermath of the attempted electrocution?

A. No, sir.

Q. Did you see any marks on his head or left leg?

A. No, sir.

Q. Did you see Willie Francis often, Sheriff, how often?

A. Every day.

Q. Did he seem the same every time you saw him.

A. Same thing.

Q. Sheriff, tell us whether or not, in your opinion, this defendant, Willie Francis, appears to be normal—do you think he is normal?

A. The only trouble with him—his speech is very bad. He stutters.

Q. Is not that known with other individuals who are perfectly sane? Aside from the fact that he stutters is there anything else to make you believe that he is mentally weak?

A. No, sir.

Q. Does he receive mail?

A. Plenty. He reads his mail and I give it to him twice a day—he can write and answers his mail. He writes well.

Q. Did he ever indicate to you at any time that perhaps he had not committed this crime?

A. He never denied it to me, no sir.

Q. Did he ever admit it to you?

A. Yes, sir.

Q. Have you ever seen anything in writing from him to indicate that he still maintains that position?

A. Not in writing—no, sir. Do you mean in writing, any kind of writing? He had in print the cell where he is at that he did kill Andrew Thomas.

Q. Written where?

A. In his cell on the wall in print.

Q. Was that before or since the attempted execution?

A. No, sir. It was before.

Q. Do you recall what is written on the wall?

A. Yes, sir. He says "I kill Andrew Thomas and today he is lying in a grave and I am not a killer but I wonder where I am going to be laying and in what kind of grave I don't know".

Q. Is that written on the wall?

A. Yes, sir on the wall.

Q. He has not seemed to change his attitude since?

A. No, sir.

Q. Did he claim to you that, when the switch was thrown, the electrons tickled him?

A. Yes, he said it did tickle him.

Q. You were not present?

A. Yes, sir, I was there.

Q. I think you were the gentleman who escorted him from the chair into the other room?

A. Yes sir.

Q. Did he claim that it hurt him or just tickled him?

A. He said just tickled him.

Q. Did he evidence any weakened condition? Did he walk without the aid or assistance of others?

A. Yes, he did.

Q. Out of the jail?

A. Yes, sir.

Q. When you reached Iberia was he able to walk into the jail or did he ever make any complaint about pain or suffering?

A. No, sir.

Q. How long after the attempted execution was it before you took him to New Iberia?

A. After he was taken out of the chair he was taken into the other room and set on the bed and the doctor examined him and asked him how he felt and he said "alright". From there he stayed a little while and I asked him if he wanted water or anything and told him I was ready to go and he said "alright".

Q. Would you say that was a half-hour or one hour?

A. I say twenty or twenty-five minutes.

ATTORNEY THORNTON:

You have had men in your jail awaiting execution before. Did he act the same way?

A. About the same. They all act the same way. The night before I ask them if they want to eat or drink anything. He said he wanted something good to eat and I got him to best steak I could buy —some ice cream and cake and he had a very good meal the night before—just like the others.

QUESTION BY THE BOARD:

He did not show any signs of being affected by the fact that the day afterwards he was going to be executed?

A. Said it did not worry him—if he had to die he was ready to die.

ATTORNEY TUREAUD:

In your opinion, did he or did he not get a shock?

A. I could not tell that—what would you think?

Q. I would not know but I know he was tickled. You attended the electrocution. At the time of the electrocution did not the chair move around? Was it your opinion or not that he got a shock?

A. It was something that must have made him move.

Q. Long before the trial, did he make any statement that there was someone else in St. Martinville who was connected with this crime? Did he ever make that statement.

A. Not to me, no sir.

Q. Before the trial, now, did he ever make the statement that someone else was connected with this crime?

A. At one time he said that but we checked and could not find it.

QUESTION BY THE BOARD:

After you checked did he say that he gave other names? Were they fictitious names or were they names you located?

A. The Sheriff in St. Martinville said he did not know anyone by those names. We checked the names he gave us and could not find any of the names.

Q. How large is St. Martinville?

A. About 3,600 or 3,800.

Q. Is it possible for someone to live there without the sheriff knowing them. Sheriff, do you happen to know the people of St. Martinville sufficiently well enough that you can run down the name of any individual?

A. Yes, sir. I know everybody by their first name, their nickname and all.

Q. Did you run down names given to you by Willie Francis? Were they fictitious?

A. They were fictitious. He told me whose son they were and I went to ask the mother. She told me her boy's name and it was something else—that he was away at the time. I think in the armed service, if my memory serves me right. I checked that and was satisfied to just forget about it.

Q. Sheriff, is there anything else about the case or attempted electrocution that you would like to tell us about.

A. Not that I remember worthwhile—nothing that I know.

QUESTION BY BOARD:

What has been his attitude as a prisoner since the date of the attempted electrocution?

A. I believe he is in a better humor than before. Speaks better.

ATTORNEY THORNTON:

His conduct is good. Never gives you any trouble?

A. Yes, it is good.

BY THE BOARD:

That is all.

Address of Mr. L. O. Pecot, District Attorney of Iberia, St. Mary and St. Martin Parishes—Made at Close of Hearing.

BOARD:

Does the District Attorney have anything to say?

DISTRICT ATTY. PECOT:

Gentlemen of this Board, I think that probably this Board would be interested in knowing a brief history of this case from the beginning to end, and, if I do say it, I pride myself of a wonderful memory—to remember the facts of my cases. I very seldom make a note in the preparation of cases; I try to commit everything to memory.

When I was called in on this case, shortly after it happened, I went to St. Martin without delay. I found Andrew Thomas at the funeral home and Dr. Yongue was waiting for me to conduct the autopsy.

QUESTION BY BOARD:

Dr. Yongue is the coroner?

A. The coroner who testified before this Board. Dr. Yongue and myself and one of the

brothers of the deceased, Zie Thomas, we were there. I saw a corpse with a bullet hole through the right eye, coming out at the right temple—two more bullet holes under the armpit and two in the back—one about the center of the back and one a little lower down—five bullet holes. This accused, in my presence, not once, but twice, told his story and I may say that we treated him with every possible consideration and courtesy, speaking to him in an ordinary tone of voice and at times questioning him. He told us his story twice at least that I can recall. You want to bear in mind that this thing broke out, not in St. Martin, but in Port Arthur, State of Texas, and it broke out this way.

The Chief of Police and one of his assistants were looking for a man on a certain train, who was supposed to bring in some dope to Port Arthur. They were at the station looking for that man and, at the same time, they had in mind a case which had happened three or four days before of an old white man who had been assaulted in his apartment and robbed and left in an unconscious condition. The person who had committed that crime had not yet been apprehended but that night, when the train came in, they saw a man coming off the train with a suitcase and they followed him and, as they went down the street, the man with the suitcase was walking a little faster all the time; when he recognized officers of the law coming he dropped the suitcase, and, as he dropped the suitcase, they saw a man crouched down under a tree. They figured they had better pick up the man as he might be an

accomplice of the fellow who dropped the suitcase and that happened to be Willie Francis—he was the man crouched down by that tree. They took him to the police station and began to question him. He stammers, but he can speak, and, after a few minutes they found out that he was not from Port Arthur; they continued to question him and found out that he was from the Parish of St. Martin.

The Chief of Police then recalled that two weeks before that time he had been in St. Martin and Sheriff Resweber had given him a complete story of the Thomas case and asked him, in his activities about the city, if he ran across any man from his section to try to apprehend him because so far they had been unable to get the right man. Therefore, after questioning Willie Francis for two or three or five minutes, he came out with a statement that he was the man who had killed Andrew Thomas in St. Martin—he had shot him five times with a pistol and that he had taken his pocket book away from him with $4.00 in it, and his watch. They asked him if he knew how to read and write and he said he could and they asked him if he had any objection to reducing that statement to writing and he did and, when the case was tried before Judge Simon, I identified that writing—I read the confession and the court allowed this statement or confession to go before the jury.

Now I want to say to you members of the Board for Judge Simon—that he exercised every diligence and every possible care and caution in regard to this case, knowing the severity of it. He

appointed counsel to defend the accused and one of the counsel is an old criminal lawyer from our Parish, James R. Parkinson and Mr. Otto Mestayer of Iberia Parish. Those two men did everything they could possible do in the selection of the jury to try the accused and I want to say that not one man on that jury came from St. Martin—they all came from other parishes away from St. Martin, who did not know Andrew Thomas and knew nothing about this case. They came from Arnaudville, from Cecelia and other sections of the Parish. We did not have one man from St. Martin. I had in mind to get the most competent jurors to give this man a fair and impartial trial. Now I want to say that there was not a loophole in that case—not one. The evidence was so tight from the beginning to the end and so connected that there could have been no mistake about him having killed Andrew Thomas. He admitted and confessed all of the surrounding facts and circumstances about which his confession referred to and I am going to refer to two or three.

He stated he had stolen that pistol from Mr. August Fuselier, a very prominent citizen of St. Martin, while his car was on the street one night.

QUESTION BY BOARD:

Was he a Deputy Sheriff?

A. That is the man the sheriff referred to. Mr. Fuselier had even notified the Sheriff's office of the pistol being stolen in the month of September, while court was going on and before this killing. I remember him coming up and saying his pistol had been stolen.

Willie Francis stated that, after he had shot Andrew Thomas and waited to do so for some two, two and one-half or three hours, by the side of his garage—after shooting him five times and taking his purse and his watch, he went back towards the railroad, away from the public highway on the front, and threw the holster of the gun in a culvert underneath the railroad right-of-way. He described the holster. Mr. Fuselier, without seeing the holster, had described it to the sheriff—the color of it. He even described to him that, due to the length of the pistol, he had to cut the threads of it. Those threads were missing. He gave them the design—a leafy design—on the holster and that holster was found by a town employee who was secured to get underneath that culvert with a hoe and dig out all of the dirt that had accumulated there. That does not lie. That pistol was August Fuselier's. He told the sheriff where he had thrown the gun, after coming back from the railroad where he had first thrown the holster—the spot near the Selon Canal where he had thrown the pistol. A man working for the town found it in a clump of grass where he said he had thrown it after he was arrested.

Gentlemen, it seems to me this case is a question as to whether or not this Board is going to follow the judgment of the jury of twelve men who listened most carefully to the evidence before bringing in their verdict, or whether or not, because of an unfortunate happening due to no fault of anyone, but just a mechanical defect, this Board is going to say "for that reason we are going to extend this man an extra portion of

mercy—we are going to send him to the penitentiary for life instead of making him pay to society for the terrible crime he committed in the Parish of St. Martin".

The other side of the picture is this. I don't say, and hope we are not, going to face other cases of this sort. It is to be presumed that there may be others and you expect juries to do their duty when they are brought face to face with facts in murders such as this. How can we expect them to convict men to pay their debts to society when, afterwards, what they have done is undone by another authority of law having the power to do so. This is what has happened in this case.

There is another side to this case. I don't want to refer to an unpleasant question, but those are facts that do happen. We have repeatedly known, in the past unfortunately, of lynchings going on when often crimes are committed. The only way and safest way to keep that from happening is to bring to justice and punish, according to each case, the guilty party. Society looks to us to do our duty and I know that you gentlemen are not going to be carried away by sentiment in this case and that you are going to carry the law as far as it is possible to do so.

ATTORNEY TUREAUD:

Mr. Pecot, you were the District Attorney who prosecuted Willie Francis in this case?

A. Yes, sir.

Q. Did Willie Francis employ a lawyer?

A. He did not. Judge Simon asked him if he had a lawyer and he appointed attorneys to represent him.

Q. Two attorneys were appointed to represent him because he did not have funds?

A. He did not have sufficient funds at that time.

Q. Do you recall approximately how many witnesses were called to testify against Willie Francis?

A. I don't know but I summoned every possible person connected with this case—connected with the circumstances—I think 12 or 15. Most of them testified as to the confession. There were other facts such as the finding of the pistol and holster. I identified—

Q. Did any witness testify that he saw Willie Francis commit this crime?

A. No, he was alone when he committed it.

Q. Is it not a fact that the only testimony against Willie Francis in this case was the alleged confession of Willie Francis?

A. Say that again.

Q. Is it not a fact that the only testimony against Willie Francis in this case was the alleged confession of Willie Francis?

A. That was the principal part of the testimony—his admission—in addition to these other facts and cir umstances, such as the finding of the pistol. The jury convicted him on the evidence they heard.

Q. Were there any witnesses who testified in behalf of Willie Francis?

A. As I understand it, there were none. I don't remember anyone.

Q. Did not Mrs. V— B—, the lady who lived next door to Andrew Thomas, say she was awakened by the shots and saw the car parked outside with the lights on and when Mr. V— B— awakened he did not see anything?

A. She looked outside and, according to the testimony at the coroner's inquest, saw this car outside with the lights on.

I don't know if it was his car. She saw a car.

ATTORNEY TUREAUD:

Q. Was she ever brought to testify?

A. No.

Q. What about the gun that was supposed to have shot Andrew Thomas?

A. I am glad you brought that up. I want to tell you about that. The sheriff was working as hard as a man can work to connect this case up. He was trying to gather up the threads of the case. He took that pistol, because of a bullet which had come out at the chest which was not very badly damaged—just a little bit flattened. He wanted to send that bullet and pistol to a ballistic expert to seek to identify the bullet and the pistol. The pistol was delivered to Captain Wright, a state policeman, who took it to Colonel Atkins of Baton Rouge and Colonel Atkins sent it to Washington to Hoover and the pistol was lost in transportation. During the war there was a congestion

of traffic, mail, etc. We have never heard from that pistol since. All of these other facts, such as the finding of the holster, were upheld.

Willie Francis did not tell us about the holster until he had been in jail four months. He came out with it voluntarily. We did not know anything about the holster until just about a couple of weeks before the trial. The pistol had already been sent off and accounted for in that way. Colonel Atkins testified that he had sent it himself, via express,—had a receipt for it.

Q. The pistol was identified by Fuselier.

A. Yes, sir. He told the sheriff what kind of a pistol and it was a Smith and Wesson.

ATTORNEY TUREAUD:

How long did the trial last, Mr. Pecot.

A. Two days.

Q. Were there any bills of exception taken during the trial?

A. The judge overruled almost every exception that was made.

ATTORNEY TUREAUD:

That is all.

THE BOARD:

Would anyone else like to say anything? Would you like to close the case?

I hereby certify that the foregoing thirty-five pages of testimony is a transcript of notes taken by me at a hearing before the Board of Pardons on Friday, May 31st, 1946 in the case of Willie Francis,—for commutation of sentence from death to life imprisonment.

(SEAL)

BESSIE LE MAITRE,
Notary Public.